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Workers' Compensation

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Workers' Compensation

Worker's Compensation; Uninsured Employers Fund— recovery of payments

Labor Code §3732 (amended).

AB 714 (Johnson); 1985 STAT. Ch 666

Support: Department of Industrial Relations; Department of Finance

Under existing law, compensation¹ paid from the Uninsured Employers Fund² may be recovered by the Director of Industrial Relations (hereinafter referred to as the Director) from any person or entity, except the employer,³ whose tortious act caused the injury or death of the employee.⁴ Chapter 666 provides that this recovery is unaffected by the percentage of fault attributable to either the employer or employee.⁵ Chapter 666 also permits the Director to compromise, settle, or waive any such recovery.⁶

Existing law permits specified persons⁷ to recover damages against a third party who is liable for an employee's injury or death.⁸ Chapter 666 entitles the Director, when bringing an action as a result of payments made to the employee, to recover all specified damages,⁹ regardless of the fact that the amount the employee could recover

1. CAL. LAB. CODE §3207 (describing the components of compensation). Compensation may be the result of any of the following: findings and award; award based on stipulations; a compromise and release on behalf of the Director; or voluntary payments of the Director pursuant to Labor Code §4903.3. *Id.* §3732(a). Compensation paid from the Uninsured Employers Fund is conclusively presumed to be reasonable in amount, and to be proximately caused by the event or events which caused the employee's injury or death. *Id.* §3732(k).

2. *Id.* §3716 (creation and use of the Uninsured Employers Fund).

3. *Id.* §3300 (definition of employer).

4. *Id.* §3732(a). *See id.* §§3751, 3751.5, 3752 (definitions of employee). Chapter 666 requires that the action commence within one year after the Director pays, or becomes obligated to pay, compensation, whichever is later. *Id.* §3732(c). Amendments to Labor Code §3732(c) are intended to be retrospective, and apply to all claims which could be, but have not yet been, brought on January 1, 1986. 1985 Cal. Stat. c. 666, §2, at _____. *See generally Review of Selected 1981 California Legislation*, 13 PAC. L.J. 513, 801 (uninsured employers under Worker's Compensation statutes).

5. CAL. LAB. CODE §3732(d).

6. *Id.* §3732(a).

7. *Id.* §3732(f) (specified persons include the following: the employee; the employee's guardian, conservator, or personal representative; the employee's estate, survivors, or heirs).

8. CAL. CIV. CODE §3281.

9. CAL. LAB. CODE §3732(a) (recovery may include compensation, interest, penalties, investigation expenses, litigation expenses, and reasonable attorney's fees).

would be less.¹⁰ Additionally, if any employee or other specified person has already received or is receiving compensation from the Uninsured Employers Fund, Chapter 666 allows the Director a lien¹¹ against any recovery by the employee or other person from a third party.¹² Under Chapter 666, when an employee or other specified person brings an action, and the Director has not joined in the action, the amount the Director can claim is reduced by the Director's share of litigation expenses.¹³ Further, Chapter 666 prohibits any judgment or settlement of the employee's third party claim without first giving the Director notice and a reasonable opportunity to perfect¹⁴ and satisfy the lien.¹⁵

10. *Id.* §3732(i).

11. CAL. CIV. CODE §2872 (definition of lien).

12. CAL. LAB. CODE §3732(f). Under Chapter 666, the *entire* amount of the recovery from a third party may be subject to the Director's lien claim. *Id.* §3732(i).

13. *Id.* §3732(j). In such a case, the Director's claim is determined as follows: the Director's full claim less the total costs of litigation expenses multiplied by the ratio of the Director's full claim to the total amount of the employee's recovery. Twenty-five percent of this amount is then subtracted, which represents the Director's reasonable share of attorney's fees. *Id.*

14. CAL. COM. CODE §9303 (security interest perfected).

15. CAL. LAB. CODE §3732(g). Chapter 666 also entitles the Director to a writ of execution to enforce payment of the lien against the third party, or against the employee if the judgment or settlement has already been recovered by the employee. *Id.* §3732(h). *See also* 1985 Cal. Stat. c. 666, §2, at ____ (except for Labor Code §3732(c), all amendments to Labor Code section 3732 apply to all claims not yet reduced to final judgment as of January 1, 1986).